

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 21, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SAMANTHA C.,

Plaintiff,

-vs-

MARTIN O'MALLEY, Commissioner of
Social Security,¹

Defendant.

No. 2:23-CV-0019-WFN

ORDER

Samantha C. [Plaintiff] brings this action seeking judicial review of the Commissioner of Social Security's final decision denying her application for disability benefits. ECF No. 1. Attorney Maren A. Bam represents Plaintiff. Special Assistant United States Attorney Michonne L. Omo represents the Commissioner [Defendant]. After reviewing the administrative record and the briefs filed by the parties, the Court **AFFIRMS** the Commissioner's final decision.

JURISDICTION

Plaintiff applied for Supplemental Security Income on February 21, 2020, alleging disability beginning on June 12, 2018. Tr. 26, 229–38. Plaintiff later amended her alleged onset date to February 21, 2020. Tr. 26, 49. The application was denied initially, Tr. 66–75, and on reconsideration, Tr. 78–863. Administrative Law Judge [ALJ] Marie Palachuk held a hearing on January 22, 2022, Tr. 45–65, and issued an unfavorable decision on March 2, 2022, Tr. 26–37. The Appeals Council denied review on November 23, 2022. Tr. 1–6. The

¹ This action was originally filed against Kilolo Kijakazi in her capacity as the acting Commissioner of Social Security. Martin O'Malley is substituted as the defendant because he is now the Commissioner of Social Security. *See* Fed. R. Civ. P. 25(d).

1 ALJ's March 2022 decision became the Commissioner's final decision, which is appealable
2 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial
3 review on January 20, 2023. ECF No. 1.

4 **FACTS**

5 Plaintiff was born in 1973 and was 46 years of age as of her alleged onset date.
6 Tr. 49, 229. She completed high school and an associate degree, Tr. 31, 86, 257, 603, and
7 has limited past work as a cashier, Tr. 31, 257. Plaintiff alleges disability based on
8 fibromyalgia, arthritis, the effects of a knee surgery, anxiety, obesity, chronic fatigue,
9 insomnia, hypothyroidism, social anxiety, and depression Tr. 50, 256.

10 **STANDARD OF REVIEW**

11 The ALJ is responsible for determining credibility, resolving conflicts in medical
12 testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
13 Cir.1995). The Court reviews the ALJ's legal conclusions *de novo* but gives deference
14 to a reasonable interpretation of a statute the agency is charged with administering. *See*
15 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The ALJ's decision will be
16 reversed only if it is not supported by substantial evidence or if it is based on legal error.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1097–98 (9th Cir. 1999). Substantial evidence is more
18 than a scintilla, but less than a preponderance. *Id.* at 1098. Put another way, "[i]t means such
19 relevant evidence as a reasonable mind might assess as adequate to support a
20 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co.*
21 *v. NLRB*, 305 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational
22 interpretation, the Court may not substitute its judgment for the ALJ's. *Tackett*, 180 F.3d at
23 1097–98; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). The
24 ALJ's decision is conclusive if it is supported by substantial evidence, even if conflicting
25 evidence supports a finding of either disability or non-disability. *Sprague v. Bowen*, 812
26 F.2d 1226, 1229–30 (9th Cir. 1987). But a decision supported by substantial evidence will
27 still be set aside if it is based on legal error. *Browner v. Sec'y of Health & Hum. Servs.*, 839
28 F.2d 432, 433 (9th Cir. 1988).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140–42 (1987). In steps one through four the claimant bears the burden of establishing disability. *Tackett*, 180 F.3d at 1098–99. This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show (1) the claimant can make an adjustment to other work; and (2) the claimant can perform specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193–94 (9th Cir. 2004). If a claimant cannot make an adjustment to other work in the national economy, she will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

ADMINISTRATIVE DECISION

On March 2, 2022, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 26–37.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the alleged onset date. Tr. 28.

At step two, the ALJ determined Plaintiff had the following severe impairments: "fibromyalgia, mild to moderate degenerative disc disease of the cervical spine, osteoarthritis of the bilateral knees, morbid obesity, depression, [and] social anxiety." *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 29–30.

The ALJ assessed Plaintiff's Residual Functional Capacity [RFC] and found she can perform sedentary work . . . except she can stand and/or walk [four] hours in an [eight]-hour workday. Postural activities can be performed occasionally except no ladders, ropes[,] or scaffolds. She must avoid concentrated exposure

1 to extreme temperatures, respiratory irritants, and hazards (e.g., unprotected
2 heights and dangerous moving machinery). From a psychological perspective,
3 the claimant needs to be in [a] generally predictable environment with no more
4 than simple changes. She can [have] superficial interaction with the public[and
5 o]ccasional interaction with coworkers and supervisors except no tandem tasks.

6 Tr. 30.

7 At step four, the ALJ found Plaintiff has no past relevant work. Tr. 36.

8 At step five, the ALJ found, based on the vocational expert's testimony, and
9 considering Plaintiff's age, education, work experience, and RFC, there were other jobs that
10 existed in significant numbers in the national economy that Plaintiff could perform. Tr.
11 36-37. The ALJ specifically identified the representative occupations of final assembler,
12 food and beverage order clerk, and document preparer. Tr. 37.

13 The ALJ thus concluded Plaintiff was not under a disability within the meaning of the
14 Social Security Act since the alleged onset date. Tr. 37.

15 ISSUES

16 The question presented is whether substantial evidence supports the ALJ's decision
17 denying benefits and, if so, whether the decision is based on proper legal standards.

18 Plaintiff contends the ALJ erred by improperly assessing the medical opinion
19 evidence.

20 DISCUSSION

21 Plaintiff alleges the ALJ erred by improperly evaluating the opinion of Rebecca J.
22 Alexander, Ph.D. ECF No. 12 at 6–13.

23 The ALJ considers the persuasiveness of each medical opinion and prior
24 administrative medical finding, regardless of whether the medical source is an Acceptable
25 Medical Source. 20 C.F.R. § 404.1520c(c). The ALJ is required to consider multiple
26 factors, including supportability, consistency, the source's relationship with the
27 claimant, any specialization of the source, and other factors, such as the source's familiarity
28 with other evidence in the file or an understanding of Social Security's disability

1 program. *Id.* The regulations make clear that the supportability and consistency of
2 the opinion are the most important factors, and the ALJ must articulate how she
3 considered those factors in determining the persuasiveness of each medical opinion or prior
4 administrative medical finding. 20 C.F.R. § 404.1520c(b). The ALJ may explain how
5 she considered the other factors, but is not required to do so, except in cases where
6 two or more opinions are equally well-supported and consistent with the record.
7 *Id.*

8 Supportability and consistency are further explained in the regulations:

9 (1) *Supportability*. The more relevant the objective medical evidence and
10 supporting explanations presented by a medical source are to support his or her
11 medical opinion[s] or prior administrative medical finding[s], the more
12 persuasive the medical opinions or prior administrative medical finding[s] will
13 be.

14 (2) *Consistency*. The more consistent a medical opinion[s] or prior
15 administrative medical finding[s] is with the evidence from other medical
16 sources and nonmedical sources in the claim, the more persuasive the medical
17 opinion[s] or prior administrative medical finding[s] will be.

18 20 C.F.R. § 404.1520c(c).

19 The Ninth Circuit has additionally held that the new regulatory framework displaces
20 the longstanding case law requiring an ALJ to provide "specific and legitimate" or "clear
21 and convincing" reasons for rejecting a treating or examining doctor's opinion. *Woods v.*
22 *Kijakazi*, 32 F.4th 785, 787, 792 (9th Cir. 2022). "Now, an ALJ's decision, including the
23 decision to discredit any medical opinion, must simply be supported by substantial
24 evidence." *Id.* at 787.

25 Rebecca Alexander, Ph.D., evaluated Plaintiff on May 25, 2021. Tr. 589–94. Dr.
26 Alexander opined that Plaintiff's "[a]bility to understand and remember complex multistage
27 instructions and sustain concentration and persist is mildly to moderately impaired by
28 depression/anxiety." Tr. 593. Dr. Alexander also opined Plaintiff's "[a]bility to interact

1 appropriately in the workplace with employers and co-workers, be in social situations, and
2 manage frustrations/anxiety [are] moderately to markedly affected by generalized and social
3 anxiety and avoidant/dependent personality traits." Tr. 594.

4 The ALJ found Dr. Alexander's opinion somewhat persuasive. Tr. 35. The ALJ noted
5 that "Dr. Alexander conducted a thorough psychological examination" and found that Dr.
6 Alexander's opinion regarding Plaintiff's mild to moderate limitations was "generally
7 supported by her own examination findings." *Id.* However, the ALJ rejected Dr. Alexander's
8 opinion that Plaintiff had marked social limitations because it was unsupported by Dr.
9 Alexander's own objective findings, which showed Plaintiff was cooperative and pleasant,
10 and inconsistent with the longitudinal record, "which contain[ed] 'subjective' reports of
11 anxiety and depression, but few 'objective' abnormalities upon mental status exam." *Id.*

12 Plaintiff argues that "'a psychologist's reliance on subjective reports, without more, is
13 not a legitimate reason for discrediting the psychologist's opinion'" because "'[i]t is
14 completely appropriate for mental health professionals to rely on their patient's subjective
15 reports.'" ECF No. 12 at 9 (citation omitted); *see also* ECF No. 12 at 10–12. However, The
16 ALJ did not reject Dr. Alexander's opinion solely because Dr. Alexander relied on subjective
17 reports. *See* Tr. 31–35. There was more: The ALJ specifically found Plaintiff's subjective
18 reports were unreliable. *Id.* The ALJ supported this finding with appropriate reasons, *id.*,
19 and Plaintiff does not challenge that reasoning, *see* ECF No. 12. The ALJ's conclusions were
20 also supported by the opinion of Renee Eisenhower, Ph.D., who assessed only mild social
21 limitations. Tr. 34.

22 Plaintiff argues further that Dr. Alexander's opinion is not undermined by Plaintiff's
23 cooperation and pleasantness on examination because cooperation with treatment providers
24 is not necessarily reflective of Plaintiff's "behavior in a work environment." ECF No. 12
25 at 10. According to Plaintiff, interacting with treatment providers is far less demanding than
26 work. *Id.* Defendant counters that Dr. Alexander was not a treatment provider but a
27 consultative examiner and that consultative examinations are more demanding than
28 treatment. ECF No. 17 at 10. Both arguments are rational. The Court must affirm the ALJ's

1 reasoning because it could convince a reasonable person. *See Tackett*, 180 F.3d at 1097–98;
2 *Morgan*, 169 F.3d at 599.

3 Finally, Plaintiff argues the ALJ erred because Dr. Alexander's opinion is consistent
4 with objective evidence in the record, specifically a PHQ-9 score of 22, which indicates
5 severe depression, and a Burns Anxiety Inventory score of 59, which indicates extremely
6 severe anxiety and panic. ECF No. 12 at 12–13. True, this objective evidence weighs against
7 the ALJ's ultimate conclusion. But the evidence is not so powerful that it required the ALJ
8 to credit Dr. Alexander's opinion (and discredit Dr. Eisenhower's). The ALJ's finding that
9 there was little objective evidence of abnormalities is reasonable, despite some evidence to
10 the contrary. Therefore, it must be affirmed. *See Tackett*, 180 F.3d at 1097–98; *Morgan*, 169
11 F.3d at 599.

12 CONCLUSION

13 Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision
14 is supported by substantial evidence and free of legal error. The Court has reviewed the
15 briefs and the file and is fully informed Accordingly,

16 **IT IS ORDERED** that:

- 17 1. Plaintiff's Brief, filed July 3, 2023, **ECF No. 12**, is **DENIED**.
- 18 2. Defendant's Brief, filed September 25, 2023, **ECF No. 17**, is **GRANTED**.

19 The District Court Executive is directed to file this Order and provide copies
20 to counsel. Judgment shall be entered for the Defendant and the file shall be **CLOSED**.

21 **DATED** this 21st day of February, 2024.

22
23 

24 WM. FREMMING NIELSEN
25 SENIOR UNITED STATES DISTRICT JUDGE

26 02-13-24